

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Kenwood Communications Corp.
Request for Declaratory Ruling to
Determine Compliance With Applicable
Sections of Part 97 of the Commission's
Rules or Waiver of Applicable Rule Sections

ORDER

Adopted: July 18, 2000

Released: July 28, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. Kenwood Communications Corp. (Kenwood), a manufacturer of commercial and amateur radio equipment, requests a declaratory ruling confirming that a device it manufactures known as the "Sky Command System" (Sky Command) complies with the Amateur Radio Service Rules. Alternatively, Kenwood requests that should we find that Sky Command does not comply with certain amateur service rules, we grant blanket rule waivers so that amateur service licensees can utilize Sky Command. For the reasons set forth herein, we deny Kenwood's requests.

II. BACKGROUND

2. Sky Command permits amateur service licensees who do not have sufficient space for High Frequency (HF) antennas, or who live in areas with restrictive covenants, to operate their HF equipment at remote locations through the use of Very High Frequency (VHF) and Ultra High Frequency (UHF) channels. The antennas for systems utilizing VHF and UHF channels are much smaller than those

1Request for Declaratory Ruling or Waiver of Applicable Rule Sections (filed November 4, 1999) (Kenwood Request). On April 17, 2000, Kenwood submitted FCC Form 159 and paid fees for waivers of two Commission rule sections.

2Kenwood Request at 1-2.

347 C.F.R. Part 97.

4Kenwood Request at 9.

5Id. at 2.

associated with HF systems.⁶ Sky Command also could be useful in situations where the amateur service licensee wants to monitor HF bands while in a room other than the “shack,”⁷ or while away from home at a local event.⁸ Using Sky Command, the amateur service licensee uses a portable VHF/UHF radio to transmit control signals and audio signals on the 440 MHz (70 cm) amateur service band to a second VHF/UHF transceiver which is interconnected by an input/output unit with the licensee’s HF transceiver.⁹ The second VHF/UHF transceiver is used to transmit the audio output from the HF transceiver on a radio frequency channel in the 144 MHz (2 m) amateur service band to the licensee’s portable VHF/UHF radio (the control point).¹⁰

3. On November 4, 1999, Kenwood submitted a request for declaratory ruling that use of Sky Command complies with the Commission’s amateur service rules, or, in the alternative, a blanket waiver of any rules which would prohibit amateur service licensees from using its Sky Command system.¹¹ Kenwood contends that Sky Command complies with the rules and that use of the device is in the public interest.¹² In the event that we conclude that Sky Command does not comply with our rules, Kenwood requests any needed rule waivers.¹³ In this connection, Kenwood argues that grant of such waiver request is in the public interest because it would allow amateur service licensees to operate their HF equipment from areas with limited physical space or from neighborhoods that have restrictive covenants that prohibit outdoor antennas.¹⁴

4. Kenwood’s request was placed on Public Notice on December 15, 1999.¹⁵ Comments or reply comments supporting Kenwood’s request were received from Gordon West Radio School, Inc. (West), Costa Mesa Emergency Service Amateur Communications (Costa Mesa), Kenwood, James M. Hicks, and Robert A. Kile. Comments or reply comments opposing Kenwood’s request were received from the American Radio Relay League, Inc. (ARRL), Robert G. Wheaton, the Bexar Emergency Amateur Repeater System (BEARS) and Kendall Amateur Radio Society (KARS). On April 17, 2000, Kenwood

⁶*Id.*

⁷“Shack,” as the term is used by Kenwood, refers to the room or area where an amateur radio station is located.

⁸*Id.* at Exhibit 1 (Sky Command System Operating Manual).

⁹*Id.* at 4, Exhibit 1 at 3.

¹⁰*Id.* at 4, Exhibit 1 at 2-3, 5, 7.

¹¹*Id.* at 1.

¹²*Id.* at 2.

¹³*Id.* at 8.

¹⁴*Id.* at 1-2.

¹⁵Wireless Telecommunications Bureau Seeks Comment on Request for Declaratory Ruling or Waiver by Kenwood Communications Corporation to Allow Amateur Radio Operators to Use Channels in the Two Meter Amateur Service Band (144.0-148.0 MHz) to Remotely Control an Amateur Service Station Transmitting on High Frequency Amateur Service Bands, *Public Notice*, 14 FCC Rcd 21360 (WTB PSPWD 1999).

submitted a Request for Waiver and paid fees for waiver of two rule sections.¹⁶

III. DISCUSSION

5. Kenwood requests a declaratory ruling, or in the alternative, a waiver with respect to several Part 97 rules.¹⁷ As set forth below, we conclude that Sky Command does not comply with Section 97.201(b), and that a waiver of the rules is not warranted.

6. The amateur service rules provide that an amateur station on or within 50 km of the Earth's surface may be under telecommand¹⁸ (remote control) where there is a radio or wireline control link between the control point and the station sufficient for the control operator to perform his or her duties.¹⁹ A radio control link requires the use of an auxiliary station.²⁰ The Commission's Part 97 rules define an auxiliary station as an amateur station, other than in a message forwarding system,²¹ that is transmitting communications point-to-point within a system of cooperating amateur stations.²² An amateur station that is an auxiliary station may transmit only on the 1.25 m and shorter wavelength bands, except the 219-220 MHz, 222.000-222.150 MHz, 431-433 MHz, and 435-438 MHz segments.²³

7. Kenwood acknowledges that in its Sky Command system the portable VHF/UHF transceiver at the control operator's location (control point), which transmits control information and audio via a channel in the 440 MHz band to the VHF/UHF transceiver interconnected with the HF transceiver, is an auxiliary station.²⁴ Kenwood contends, however, that the VHF/UHF transceiver interconnected with the HF transceiver, which transmits the audio output from the HF transceiver to the operator at the control point via a channel in the 144 MHz band, is not an auxiliary station.²⁵ Specifically, it argues that because

¹⁶Request for Waiver (filed April 17, 2000).

¹⁷See Kenwood Request at 5-8.

¹⁸Telecommand is a one-way transmission to initiate, modify, or terminate functions of a device at a distance. 47 C.F.R. § 97.3(a)(41).

¹⁹See 47 C.F.R. § 97.213. The duties of the control operator are to insure the immediate proper operation of the station and to operate the station only in the manner and to the extent permitted by the privileges authorized for the class of operator license held by the control operator. See 47 C.F.R. § 97.105.

²⁰See 47 C.F.R. § 97.213.

²¹A message forwarding system is a group of amateur stations participating in a voluntary, cooperative, interactive arrangement where communications are sent from the control operator of an originating station to the control operator of one or more destination stations by one or more forwarding stations. 47 C.F.R. § 97.3(a)(31).

²²47 C.F.R. § 97.3(a)(7).

²³47 C.F.R. § 97.201(b).

²⁴Kenwood Request at 7.

²⁵*Id.* at 8.

the 2 m link is not used for telecommand, it should not be considered an auxiliary station.²⁶

8. We disagree. Section 97.213(a) of the Commission's Rules requires that if radio is used for the control link between the control point and the station, the control link must use an auxiliary station,²⁷ and Section 97.201(b) limits auxiliary stations to transmitting only on the 1.25 m and shorter wavelength bands, with the exception of certain frequency segments.²⁸ In this regard, we note that Section 97.213(a) does not distinguish between radio control links used by the control operator for telecommand and radio control links used for other purposes, *i.e.*, the distinction Kenwood draws between the VHF and UHF link.²⁹ Moreover, it is our view that the return transmissions from the HF station to the remote control point are part of the telecommand function being performed over the control link. In this regard, we note that the information transmitted from the HF station to the control operator informs the control operator as to whether the HF station is functioning in the manner the control operator desires and this information may cause the control operator to initiate, modify, or terminate functions, such as changing the HF transceiver's memories, setting or changing frequencies, or turning off the remotely controlled HF transceiver. We also note that the VHF link is integral to Sky Command and that without these VHF return transmissions, Sky Command is not of any use to an operator because the operator cannot hear what the HF station is receiving. We agree with BEARS that ignoring the return transmissions in the system, which are on the 2 m amateur service band, is at best a tortured interpretation.³⁰ Moreover, we note that Section 97.3(a)(7) defines an auxiliary station as an amateur station "transmitting *communications point-to-point within a system* of cooperating amateur stations,"³¹ and we note that "*communications point-to-point within a system*" would include all communications between the location of the HF station and the station at the remote control point. Thus, we conclude that Sky Command does not comply with Section 97.201(b) of the Commission's Rules because Section 97.201(b) does not authorize auxiliary stations to transmit on the 2 m band.

9. We now turn to whether a blanket waiver to permit Sky Command auxiliary stations to transmit on the 2 m amateur service band is warranted. To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either (a) that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and grant of the requested waiver would be in the

²⁶*Id.*

²⁷47 C.F.R. § 97.213(a).

²⁸47 C.F.R. § 97.201(b).

²⁹Kenwood also argues that the transmission of the audio from the HF station to the control point should be considered third party communications, rather than a function of the auxiliary station. *See* Kenwood Request at 8. We disagree. Third party communications is a message from the control operator (first party) of an amateur station to another amateur station control operator (second party) on behalf of another person (third party). *See* 47 C.F.R. §§ 97.3(a)(46), 97.115(b). In the configuration that Kenwood outlines, there is no third party. Therefore, we conclude that Kenwood's proposed transmissions on the 2 m amateur band are not within the definition of third party communications.

³⁰BEARS Opposition at 1.

³¹47 C.F.R. § 97.3(a)(7) (emphasis added). In this case, the "system of cooperating amateur stations" is the handheld or portable VHF/UHF station controlling the system, which is at the control operator's location (remote control point); the second handheld or portable VHF/UHF station, which is interconnected with the HF station; and the remotely controlled HF station's transceiver.

public interest; or (b) that, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.³² We find that Kenwood has met neither standard.

10. *Underlying Purpose.* The underlying purpose of limiting auxiliary stations to transmitting only on the 1.25 m and shorter wavelength bands is to minimize the possibility of harmful interference to other amateur service stations and operations, particularly “weak signal” activity³³ in the 2 m (144-148 MHz) band.³⁴ In a subsequent *Order*, the Commission reaffirmed this approach by rejecting a proposal to eliminate the frequency restrictions applicable to auxiliary stations.³⁵ The Commission agreed with those commenters who argued that opening lower frequencies to auxiliary stations was unjustified because path lengths for such operations generally are too short to require such frequencies.³⁶ Further, the Commission believed that eliminating the restriction would result in harmful interference because many bands (particularly the 2 m band) already were fully loaded in many areas.³⁷ As a result, it determined that these frequency restrictions should be retained because the rules reflect a good correlation between the frequencies authorized for auxiliary operation and auxiliary link functions.³⁸ Moreover, it believed that the potentially disruptive interference that could occur to other amateur service operations if auxiliary operations were expanded outweighed the additional flexibility and other benefits resulting from elimination of these frequency restrictions.³⁹ Kenwood has not shown that this is no longer correct, and several commenters raise these same concerns.⁴⁰ Accordingly, we conclude that application of the frequency limitations in Section 97.201 of the Commission’s Rules to Kenwood’s proposal is consistent with the Commission’s intent to minimize potentially disruptive interference.

11. *Public Interest.* Kenwood argues that grant of a waiver would be in the public interest because it would allow amateur service licensees to operate their HF equipment from areas with limited physical space or from neighborhoods that have restrictive covenants prohibiting outdoor antennas.⁴¹ As an

³²47 C.F.R. § 1.925(b)(3).

³³Weak signal communications are primarily Morse code telegraphy and single sideband voice messages transmitted over very long distances in the VHF and UHF amateur service bands.

³⁴Deregulation of Part 97 of the Commission’s Rules to Simplify the Licensing and Operation of Complex Systems of Stations and Modify Repeater Subbands in the Amateur Radio Service, *Report and Order*, Docket No. 21033, 66 FCC 2d 207, 215 ¶ 6 (1977).

³⁵See Amendment of the Amateur Service Rules to Allow Auxiliary Operation on All Amateur Service Frequencies, except 431-433 MHz and 435-438 MHz, *Order*, FCC 86-125 (rel. Mar 26, 1986).

³⁶*Id.* at ¶ 3.

³⁷*Id.*

³⁸*Id.* at ¶ 4.

³⁹*Id.*

⁴⁰BEARS Opposition at 2; ARRL Comments at 6 (the variety of uses of 2 m has expanded since 1986); KARS Reply Comments at 1-2. See also Kenwood Request, Exhibit 1 at 3 (Sky Command manual instructs the operator to choose a frequency (on the 144 MHz band) that does not interfere with local stations).

⁴¹Kenwood Request at 1-2.

initial matter, we note that such constraints do not necessarily prevent amateur service stations from transmitting on the HF amateur service bands. It is our understanding that amateur radio operators in apartments have used antennas designed for operating from cars and “slinky-type” antennas to transmit on the HF bands from locations that do not allow permanent outdoor antennas and towers.⁴² We also note that it is our understanding that some of these restrictive covenants prohibit only antennas that are visible from the front of the dwelling or that are above the roof line, thereby allowing certain HF antennas such as ground-mounted verticals. Other amateur radio operators have used attic antennas or hollow flagpoles as support structures for HF antennas or have chosen to operate on the HF bands from mobile stations.⁴³ Moreover, there is no firm evidence to support Kenwood's argument that granting the waiver request will allow licensees in antenna restricted locations to operate stations on the HF amateur service bands, because Kenwood has not shown that these licensees are willing or able to obtain a second location where they could install the necessary equipment and outdoor transmitting antennas.

12. Finally, we are not persuaded by Kenwood's argument that we should grant the requested waiver on the basis that Sky Command will allow amateur service licensees to use combinations of frequencies to form complex communications systems that will make amateur service licensees even more efficient in handling disaster, emergency, and other public service communications.⁴⁴ Use of amateur service equipment and channels to form complex communications systems for public service communications reflects a choice the amateur service licensee has made as to how to use amateur service channels, rather than anything inherent in Sky Command. We also note that none of the situations in which Kenwood says Sky Command would be very useful are public service applications *per se*, but rather are applications that allow a licensee personally interested in operating on the HF bands to pursue this interest at locations other than the HF station.⁴⁵

13. *Unique Circumstances.* Kenwood has not claimed that there are any unique or unusual factual circumstance that would justify grant of a waiver here. Further, we are concerned that granting a waiver to Kenwood for Sky Command would not be a technology-neutral approach, by favoring a particular manufacturer's product. In this regard, we note that it appears that Sky Command can be used only with certain Kenwood HF transceivers and handheld radios.⁴⁶ For this reason, we agree with the ARRL that it is inappropriate for us to take actions that have the effect of favoring amateur service licensees who use the products of one particular manufacturer.⁴⁷

14. *Lack of Reasonable Alternatives.* As noted above, the rules require an auxiliary station to transmit only on the 1.25 m and shorter wavelength bands, except the 219-220 MHz, 222.00- 222.15 MHz, 431-433 MHz, and 435-438 MHz segments.⁴⁸ Kenwood concedes that it could have designed Sky

⁴²See *The ARRL Antenna Book* at 4-3 (16th ed. 1991) (discussion of antennas that can be used in apartments).

⁴³See, e.g., *QST* at 53-54 (May 1999) (regarding construction of a flagpole antenna).

⁴⁴Kenwood Request at 4, Reply Comments at 2-5; see also West Comments at 2; Costa Mesa Comments at 1-2.

⁴⁵Kenwood Request, Exhibit 1.

⁴⁶*Id.*

⁴⁷ARRL Comments at 3-4.

⁴⁸47 C.F.R. § 97.201(b).

Command to operate on the 222 MHz band rather than the 144 MHz band.⁴⁹ It states that it chose the 144 MHz band because many amateur service licensees already own dual-band equipment operating in the 144 MHz and 440 MHz bands, and Kenwood wanted Sky Command to be compatible with existing equipment.⁵⁰ Similarly, ARRL states that Kenwood currently markets a radio in Japan that transmits on the 440 MHz and 1296 MHz bands and can be used with Sky Command, but which Kenwood has chosen not to export to the United States.⁵¹ Kenwood, however, in response states its belief that there is no market for this radio in the United States because reconfiguring Sky Command's VHF channel to transmit in a higher frequency amateur service band ignores the marketplace reality that the amateur service community demands a VHF/UHF dual-band transceiver for Sky Command application.⁵² We conclude that Kenwood's analysis of the market and marketing decisions are not sufficient bases upon which we can conclude that Kenwood has no reasonable alternative to the 144 MHz band for Sky Command operations. Indeed, it appears that Kenwood prefers to use a VHF/UHF dual-band transceiver that it already markets for its Sky Command system because this VHF/UHF dual-band transceiver also can be used for other amateur radio applications, such as packet radio and voice communications. Therefore, we believe that grant of this requested waiver is not warranted because a reasonable alternative exists that would be consistent with the Commission's Rules.

IV. CONCLUSION

15. For the foregoing reasons, we conclude that use of the 144 MHz amateur service band for Sky Command does not comply with the Commission's amateur service rules. We also conclude that Kenwood has not demonstrated that a blanket rule waiver permitting amateur service licensees to utilize the 144 MHz band to operate a Sky Command system is warranted under the circumstances presented.

V. ORDERING CLAUSES

16. ACCORDINGLY, IT IS ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request for declaratory ruling or waiver filed by Kenwood Communications Corp. on November 4, 1999, IS DENIED.

17. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry

⁴⁹Kenwood Request at 7 n.10.

⁵⁰*Id.*

⁵¹ARRL Comments at 3-4.

⁵²Kenwood Reply Comments at ii.

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